

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**BEN LEWIS, AARON NORRID, BILLY JO  
QUISENBERRY and FRED ROMERO, by and  
through their legal guardian and next friend THE  
ARC OF NEW MEXICO, BREANNE LIDDELL,  
by and through her parent and legal guardian  
JUDY LIDDELL, MATTHEW ALLEN, by and  
through his parents and legal guardians JIM and  
ANGELA ALLEN, FAY MORGAN, DEBORAH  
EMINGER and PROTECTION AND ADVOCACY  
SYSTEM, INC.,**

**Plaintiffs,**

**vs.**

**No. CIV 99-0021 MV/JHG**

**NEW MEXICO DEPARTMENT OF HEALTH,  
NEW MEXICO DEPARTMENT OF HUMAN  
SERVICES, J. ALEX VALDEZ, Secretary of the  
Department of Health and Secretary Designee of  
the Department of Human Services in his official  
capacities, and GOVERNOR GARY JOHNSON in  
his official capacity,**

**Defendants.**

**MEMORANDUM OPINION AND ORDER**

**THIS MATTER** is before the Court on Plaintiff's Motion for Reconsideration Regarding Memorandum Opinion and Order of January 5, 2005 [**Doc. No. 238**], filed January 21, 2005, and fully briefed on February 24, 2005. Plaintiff moves the Court to amend its January 5, 2005 Memorandum Opinion and Order by "withdrawing all references to the language of N.M.S.A. §28-16A-13," and by reconsidering its 15% downward adjustment of attorneys' fees. Pl.'s Mot. for Recons. at 5. Plaintiff concedes it did not prevail on all of the issues. However, Plaintiff

contends the Court's rationale for the 15% reduction is at odds with the Court's February 5, 2004 Judgment. Plaintiff contends the Court's February 5, 2004 Judgment did not indicate that legislative appropriations were an effective cap on the number of individuals served in the program. On September 7, 2005, the Court entered its Memorandum Opinion and Order addressing this contention and will not do so again. Therefore, Plaintiff's request that the Court reconsider its 15% downward adjustment of attorneys' fees is denied.

Finally, Plaintiff requests an increase of the award of gross receipts tax on the attorneys' fees the Court awarded. Plaintiff contends the tax rate it argued is no longer the correct rate. Plaintiff requests the Court award the gross receipts tax rate of 6.75% which became effective January 1, 2005. Accordingly, Plaintiff requests the Court amend its Order to reflect this current gross receipts tax rate.

In support of its request for an increase of the award of gross receipts tax, Plaintiff cites to *Mares v. Credit Bureau of Raton*, 801 F.2d 1197, 1207 (10th Cir. 1986). Specifically, Plaintiff cites to the following passage in *Mares*:

In *Ramos* we expressed the view that the "hourly rate at which compensation is awarded should reflect rates in effect **at the time the fee is being established by the court**, rather than those in effect at the time the services were performed." We explained the rationale for utilizing current rates as follows:

The lawyers seeking fees usually will not have been paid for their services until the court makes its allowance. We think that awarding compensation at current rates will roughly approximate periodic compensation adjusted for inflation and interest and will obviate the necessity of guessing when periodic billings would have been made and paid in an analogous private situation.


*Id.* at 1207 (internal citations omitted)(emphasis added). In this case, Plaintiffs filed their Motion for Attorneys' Fees and Expenses [Doc. No. 202] on March 5, 2004. The motion was fully briefed on May 7, 2004. Although the Court did not enter its Memorandum Opinion and Order

until January 5, 2005, the Court began reviewing the parties' voluminous pleadings submitted in support of their positions and established the attorneys' fees prior to January 1, 2005.

Accordingly, the Court will deny Plaintiff's request for an increase of the award of gross receipts tax on the attorneys' fees the Court awarded in its January 5, 2005 Memorandum Opinion and Order.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion for Reconsideration Regarding Memorandum Opinion and Order of January 5, 2005 is DENIED.

**Dated** this 28th day of September, 2005.

  
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MARTHA VAZQUEZ  
UNITED STATES DISTRICT JUDGE

**Attorneys for Plaintiff:**

Duff Westbrook  
Maureen Sanders  
Nancy Koenigsberg

**Attorneys for Defendants:**

Kurt Wihl  
Gary J. Van Luchene